

**THE WHITE HOUSE**  
**WASHINGTON**

July 17, 2007

Dear Mr. Kelner:

I write to follow up on my April 17, June 30, and July 9, 2007 letters to you concerning White House documents in the form of White House e-mails sent or received on Republican National Committee (RNC) e-mail accounts. As you are aware, the RNC received a document subpoena from the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary of the House of Representatives on Friday, July 13, 2007. That subpoena seeks “all documents . . . that the [RNC] has identified as responsive to the letter request dated April 12, 2007 . . . and that the [RNC] is withholding from the Subcommittee . . . based on White House direction.” That subpoena identifies a return date/time of July 17, 2007 at 10:00 a.m.

As you are also aware, the July 9, 2007 letter identifies two categories of material that the RNC has been directed to withhold absent prior White House authorization. The first category consists of documents called for and covered by the Committee’s June 13, 2007 subpoena to the White House. That subpoena seeks “documents in the possession, custody or control of the White House related to the Committee’s investigation into . . . the hiring and firing of United States Attorneys” and explicitly “instruct[s]” the White House to produce, among other things, “documents that the [White House] ha[s] a legal right to obtain [or] to copy, or to which [the White House] ha[s] access . . . .” The second category contains documents which, although not called for by the June 13 subpoena to the White House, are nevertheless official White House records relating to the performance of official duties involving communications between or among White House officials and between White House officials and other persons.

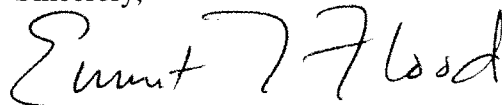
As to the first of these two categories, these subpoenaed documents fall within the terms of the June 27, 2007 opinion from the Acting Attorney General to the President and are covered by the President’s June 28, 2007 assertion of Executive Privilege. For this reason, the RNC is again directed not to disclose these materials to the Subcommittee or to any other person without prior authorization of the White House.

As to the second of these two categories, official White House records relating to the performance of official duties involving communications between or among White House officials and between White House officials and other persons, the RNC is likewise directed not to disclose these materials to the Subcommittee or to any other person without prior authorization of the White House. Although we do not regard these documents as responsive to the June 13 subpoena to the White House, these documents do involve communications relating to the official duties of White House officials and require a more complete evaluation as to their potentially protected status.

In this regard, we note that the July 17, 2007 return date set out in the subpoena affords the RNC, and therefore the White House, less than two full business days to evaluate and decide the question whether they must be withheld or disclosed in response to compulsory process. It is difficult to imagine any setting in which less than two business days would be deemed a reasonable period for responding to a subpoena. In the present context, and in view of both the White House interest in these documents, and the constitutionally mandated process of accommodation for attempting to resolve interbranch differences, the return date is inherently unreasonable. Although the White House has already begun the process of assessing these materials for purposes of determining whether or not they can be produced in response to the July 13 subpoena, more time is needed to complete such an assessment and to take whatever steps may be necessary to establish the necessary legal groundwork for such decisions. We anticipate completing this assessment within two weeks, by July 31, 2007. At that point (or sooner, if possible), we will advise you concerning the status and treatment of these documents.

Please telephone me at (202) 456-1019 if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink that reads "Emmet T. Flood". The signature is written in a cursive, flowing style.

Emmet T. Flood  
Special Counsel to the President

Robert K. Kelner, Esq.  
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cc: The Honorable John Conyers, Jr.  
Chairman, Committee on the Judiciary

The Honorable Linda Sánchez  
Chairwoman, Subcommittee on Commercial and Administrative Law

The Honorable Lamar Smith  
Ranking Member, Committee on the Judiciary

The Honorable Chris Cannon  
Ranking Member, Subcommittee on Commercial and Administrative Law